

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JOHN ERNEST WILKESON,  
Plaintiff,

Case No. 2:23-cv-01591-GMN-NJK

v.

**ORDER**

RAUL LAKANDULA SANTILLAN,  
Defendant.

Pursuant to 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*. Docket No. 1. Plaintiff also submitted a complaint. Docket No. 1-1.<sup>1</sup>

**I. In Forma Pauperis Application**

Plaintiff filed the affidavit required by § 1915(a). Docket No. 1. Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Clerk's Office is further **INSTRUCTED** to file the complaint on the docket. The Court will now review Plaintiff's complaint.

**II. Screening the Complaint**

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

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<sup>1</sup> The Court liberally construes the filings of *pro se* litigants. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

1 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the  
2 complaint with directions as to curing its deficiencies, unless it is clear from the face of the  
3 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70  
4 F.3d 1103, 1106 (9th Cir. 1995).

5 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint  
6 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is  
7 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723  
8 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim  
9 showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*,  
10 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it  
11 demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause  
12 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265,  
13 286 (1986)). The court must accept as true all well-pled factual allegations contained in the  
14 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.  
15 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do  
16 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from  
17 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.  
18 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted  
19 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal  
20 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

21 In addition, the Court has a duty to ensure that it has subject matter jurisdiction over the  
22 dispute before it, an issue it may raise at any time during the proceedings. *See, e.g.*, Fed. R. Civ.  
23 P. 12(h)(3). Federal courts are courts of limited jurisdiction and possess only that power  
24 authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). “A  
25 federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively  
26 appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221,  
27 1225 (9th Cir. 1989). “The party asserting federal jurisdiction bears the burden of proving that the  
28

1 case is properly in federal court.” *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001)  
 2 (citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

3 In this case, Plaintiff’s complaint summarily alleges that Defendant violated federal and  
 4 state laws by “evicting” Plaintiff from his residence and for violations of the Americans with  
 5 Disabilities Act and Fair Housing Statutes. *See* Docket No. 4.<sup>2</sup> Such an assertion fails to state a  
 6 claim or provide the basic notice required for a proper complaint. A complaint must provide the  
 7 defendant with “fair notice of what the . . . claim is and the grounds upon which it rests.” *Twombly*,  
 8 550 U.S. at 555 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). A complaint must contain  
 9 “sufficient allegations of underlying facts to give fair notice and to enable the opposing party to  
 10 defend itself effectively.” *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159  
 11 (9th Cir. 2016). The instant complaint does not meet these standards.

12 The complaint also does not provide a basis for this Court to exercise diversity jurisdiction  
 13 in this matter. To establish diversity jurisdiction, the parties must be citizens of different states  
 14 and the amount in controversy must exceed \$75,000. 28 U.S.C. § 1332(a). Here, the complaint  
 15 alleges that Plaintiff and Defendant live at the same address. *See* Docket No. 1-2. The police  
 16 report attached to the complaint further states that the incident occurred at that same address. *See*  
 17 Docket No. 1-1 at 6-8. Thus, the parties do not appear to be citizens of different states. Moreover,  
 18 the complaint fails to allege an amount in controversy in excess of \$75,000. *See* Docket No. 1-1 at  
 19 4.<sup>3</sup>

20 In light of the above, Plaintiff’s complaint is **DISMISSED** with leave to amend. If Plaintiff  
 21 can cure the deficiencies identified above, he must file an amended complaint by November 3,  
 22 2023.

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 24  
 25 <sup>2</sup> The complaint attaches exhibits, which consists of a police report for stolen property. *See*  
 26 Docket No. 1-1 at 6-7. These exhibits do not further illuminate the nature or basis of the claim  
 brought here.

27 <sup>3</sup> Plaintiff also alleges federal question jurisdiction; however, on the complaint provided  
 28 here, the Court cannot determine whether federal question jurisdiction exists. *See* Docket No. 1-  
 1 at 3.

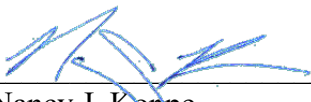
1 **III. Conclusion**

2 Accordingly, **IT IS ORDERED** that:

- 3 1. Plaintiff's request to proceed *in forma pauperis* is **GRANTED**. Plaintiff shall not be  
4 required to pay the filing fee. Plaintiff is permitted to maintain this action to conclusion  
5 without the necessity of prepayment of any additional fees or costs or the giving of a  
6 security therefor. This order granting leave to proceed *in forma pauperis* shall not  
7 extend to the issuance and/or service of subpoenas at government expense.
- 8 2. The Clerk's Office is **INSTRUCTED** to file Plaintiff's complaint on the docket.
- 9 3. The complaint is **DISMISSED** with leave to amend. Plaintiff will have until  
10 **November 3, 2023**, to file an amended complaint, if the noted deficiencies can be  
11 corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed that the  
12 Court cannot refer to a prior pleading (i.e., the original complaint) in order to make the  
13 amended complaint complete. This is because, as a general rule, an amended complaint  
14 supersedes the original complaint. Local Rule 15-1(a) requires that an amended  
15 complaint be complete in itself without reference to any prior pleading. Once a plaintiff  
16 files an amended complaint, the original complaint no longer serves any function in the  
17 case. Therefore, in an amended complaint, as in an original complaint, each claim and  
18 the involvement of each Defendant must be sufficiently alleged.
- 19 4. **Failure to comply with this order will result in the recommended dismissal of this**  
20 **case.**

21 IT IS SO ORDERED.

22 Dated: October 6, 2023

23   
24 Nancy J. Koppe  
25 United States Magistrate Judge  
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